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In The
Supreme Court of the United States

WHOLE WOMAN'S HEALTH, et al.,

Petitioners,

v.

JOHN HELLERSTEDT, M.D.,
COMMISSIONER OF THE TEXAS DEPARTMENT
OF STATE HEALTH SERVICES, et al.,

Respondents.

**On Writ Of Certiorari To The
United States Court Of Appeals
For The Fifth Circuit**

BRIEF OF *AMICUS CURIAE* ILLINOIS RIGHT TO LIFE IN SUPPORT OF RESPONDENTS

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INTEREST OF *AMICUS CURIAE*[1]

Amicus curiae Illinois Right to Life is an Illinois not-for-profit corporation that seeks to build a culture of life in Illinois, welcoming and loving all human life from conception through natural death. Illinois Right to Life offers educational resources on the science of life, abortion, and protection against end-of-life dangers, as well as resources for women facing crisis pregnancies and those seeking healing after an abortion. Additionally, and most pertinent, Illinois Right to Life seeks to educate women on the risks of the abortion procedure itself and, in January 2015, it produced a comprehensive report on the safety (or, rather, lack thereof) of Illinois abortion facilities. Women's Health Comes First, "*Illinois Department of Public Health puts Women's Health at Risk: a Full Report*" ("IRL Report"), Jan. 2015, *available at* http://illinoisrighttolife.org/womens-health-comes-first-a-project-of-illinois-right-to-life/full-report/.

The deplorably unsanitary state of Illinois abortion facilities, as a result of lax laws and even laxer regulations by the Illinois Department of Public Health for inspecting and holding such facilities accountable, give a graphic illustration of why measures such as

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[1] Counsel for a party did not author this brief in whole or in part, and no such counsel or party made a monetary contribution to fund its preparation or submission. No person or entity other than *amicus curiae* or its counsel made a monetary contribution to the preparation and submission of this brief. All parties have timely consented to the filing of this brief.

the legislation at issue in this case are necessary to protect women.

Given *amicus* has seen the harm a lack of oversight in abortion clinics causes women, has a strong interest in the issues presented, and is active in efforts to educate Illinoisans on the risks posed by unsafe conditions at abortion clinics, *amicus* suggests that this brief may be helpful to the Court.

SUMMARY OF ARGUMENT

Petitioners and their *amici* would have this Court believe that the Texas law in question serves no legitimate purpose in furthering the State's interest in women's health and safety. A look to Illinois' experience with abortion regulation, as well as examples from other states, indicate that not only does Texas have a legitimate purpose in passing HB-2, but it has a *vital* purpose in doing so.

Illinois passed a similar law to what Texas has enacted, but the courts invalidated it as applied to abortion providers while permitting it to be in effect for all other types of clinics, under the logic that facilities providing abortion do not need the same oversight. We can now look to Illinois to see the catastrophic consequences that substandard oversight of abortion clinics has caused for women's health. This has led to a proliferation of unlicensed and uninspected abortion providers, resulting in the abandonment of women to grotesque and unsanitary

clinics. In turn, these unsanitary and dangerous clinics have caused women to be treated in slum-like abortion clinics and have caused numerous deaths and permanent injuries to women seeking what they hoped and trusted would be safe abortion procedures in clinics the State permits to operate.

Illinois is not alone in this experience—countless other states have their own stories to tell, and examples here include Virginia, Ohio, Georgia, Delaware, Alabama, Michigan, and even Texas itself.

ARGUMENT

The Supreme Court has consistently recognized the interest of the State in protecting the health and safety of its citizens as they undergo medical procedures. *Planned Parenthood v. Casey*, 505 U.S. 833, 878 (1992). This interest should not be any lower when the patient is a woman seeking an abortion than when it's a woman seeking plastic surgery. In the case at bar, Texas has implemented laws and regulations to protect the health and safety of all women seeking abortion. A look to the state of facilities that provide abortion in Illinois demonstrates why increased regulation of abortion facilities is necessary to protect the health of women, irrespective of the State's interest in the "potential life" of the fetus.

I. ILLINOIS LAWMAKERS HAVE FAILED TO ENSURE SAFE CONDITIONS IN ILLINOIS ABORTION FACILITIES, CAUSING HARM TO ILLINOIS WOMEN.

A. Illinois' lax abortion facility inspection policies result in unsanitary, unsafe conditions.

As in Texas, a majority of Illinois abortion clinics are held to a lesser standard in the law. In Illinois, nursing homes, restaurants, and even *tanning salons* are more strictly inspected and held to appropriate industry standards than abortion providers.

In the 1980s, Illinois lawmakers tried to adopt similar legislation to that of Texas's HB-2, including abortion providers in its Ambulatory Surgical Treatment Center ("ASTC") Act. *See* 210 Ill. Comp. Stat. 5/1 *et seq*. A lawsuit by abortion providers led to the invalidation of the ASTC Act only as applied to providers of abortions in the first or early second trimesters of pregnancy. A later settlement agreement between the State and the abortion providers required the remaining abortion providers to be licensed in a special, lesser regulated class made only for abortion clinics called "Pregnancy Termination Specialty Centers" ("PTSC") category. *See Ragsdale v. Turnock*, 841 F.2d 1358 (7th Cir. 1988); *Ragsdale v. Turnock*, 724 F. Supp. 1457, 1461 (N.D. Ill. 1990) (approving settlement and entering consent decree). However, today, this has left every Planned Parenthood abortion clinic in Illinois unlicensed.

According to Illinois law, for those clinics that are licensed as either ASTCs or PTSCs, the Illinois Department of Public Health ("IDPH") shall "make or cause to be made inspections and investigations it deems necessary." 210 Ill. Comp. Stat. 5/9. However, under these loose oversight laws, the IDPH has no administrative policy whatsoever governing the frequency of inspecting abortion clinics, for sanitary or other reasons. Email from Darlene Linxwiler, IDPH Freedom of Information ("FOIA") Officer (Aug. 4, 2014, 12:24 CST), *available at* IRL Report, App. EE.

By contrast, Illinois tanning salons must be licensed and inspected every year. 210 Ill. Comp. Stat. 145/15(e). The City of Chicago requires restaurants to be licensed and inspected at least once every six months. Chi. Bd. of Health, Food Service Sanitation Rules and Regulations, § 101 (Inspection and Correction of Violations, Frequency), *available at* http://www.cityofchicago.org/content/dam/city/depts/cdph/environmental_health_and_food/ChgoBoardofHealthUpdRulesRegs2172015.pdf. And federal law requires nursing homes to be licensed and inspected at intervals no greater than 15 months, but with an overall state average of 12 months for all facilities. 42 U.S.C. § 1395i-3(g)(2)(A)(iii)(I).

Through FOIA requests Illinois Right to Life made to the IDPH, it discovered that between 2000 and 2010, 92% of abortion clinics received no health or sanitary inspection whatsoever. IRL Report at 3. Nearly 86% of clinics went between nine and 17 years without an inspection. *Id.* at 3, App. A. After the

grisly practices perpetuated by Kermit Gosnell[2] in his Pennsylvania clinic came to light, however, Illinois finally inspected its abortion clinics and uncovered approximately 193 health and life code violations in thirteen of the fourteen licensed abortion clinics. Associated Press, *Illinois cracks down on abortion clinics*, DAILY HERALD, Jan. 21, 2012, http://www.dailyherald.com/article/20120121/news/701219790.

What these inspections uncovered was so horrific that the IDPH closed two clinics on an emergency basis. *Id.* One of those two clinics had been using autoclave machines to clean surgical equipment despite the autoclave repeatedly failing its testing—which resulted in doctors performing abortions on women with unsterilized instruments. IDPH Statement of Deficiencies and Plan of Correction ("Deficiencies Report"), N. Ill. Women's Ctr. Rockford, Jun. 8, 2011, *available at* IRL Report, App X. A third clinic was issued an emergency closure after it failed to fix the violations the IDPH uncovered. Some reports merely stated these disgusting lapses in sterile language, simply recording that clinics had failed "to ensure a sanitary environment" in operating rooms. Deficiencies Report, Access Health Ctr., May 18, 2011, *available at* IRL Report, App. J; Deficiencies Report, ACU Health Ctr., May 23, 2011, *available at* IRL

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[2] The brief of *amici curiae* Texas Values and 3801 Lancaster Film Project in support of Respondents goes into detail about Kermit Gosnell. To avoid redundancy and wasting this Court's time, this brief will not re-tread that ground.

Report, App. T; Deficiencies Report, Women's Aid Clinic, May 23, 2011, *available at* IRL Report, App. V. Another stated the clinic "failed to ensure medication syringes were labeled and stored in a safe, clean area." Deficiencies Report, Nat'l Health Care, Oct. 2, 2013, *available at* IRL Report, App. E.

Others gave more graphic descriptions of the failures. For example, an inspector observed a technician "retrieving a paper towel from a garbage receptacle and using the same paper towel to cover a tray that would serve food items to patients." Deficiencies Report, Women's Aid Clinic, Sept. 7, 2011, *available at* IRL Report, App. C. The same clinic's suction machine "contained clear water with specks of floating debris," all five of its recovery beds were rusty, and the inspector found crumbs in nearly twenty cups containing patients' pain medication. *Id.* at App. D. Other clinics had similar medication issues, with one failing to "ensure single dose vials were not available for use on multiple patients." Deficiencies Report, Nat'l Health Care, Oct. 2, 2013, *available at* IRL Report, App. K. Another failed to "ensure the oxygen tank in the recovery room contained an adequate amount of oxygen," to assist a woman in the event of an emergency. Deficiencies Report, Hope Clinic for Women, Oct. 7, 2013, *available at* IRL Report, App. N.

One clinic's operating room had "loose debris on the floors, a red stain on a wall and standing water in a small bucket," despite the last surgical day having been two full days prior. Deficiencies Report, Access Health Ctr., May 18, 2011, *available at* IRL Report,

App. I. Yet another's operating room had "tape on an IV pole and brown stains on the suction machine"—a full *nine days* after the last surgical day. Deficiencies Report, ACU Health Ctr., May 23, 2011, *available at* IRL Report, App. S. Another contained shoes stored with an open box of surgical gloves, as well as multiple gynecological cannulas (surgical tools inserted into a woman's uterus) "stained with a brown substance." Deficiencies Report, N. Ill. Women's Ctr. Rockford, Jun. 8, 2011, *available at* IRL Report, App. F. Still another had what was supposed to be sterile suction tubing—which would be inserted into a woman's uterus—hanging over a biohazard container such that when the container was opened, its lid touched the tubing, rendering it no longer clean for use. Deficiencies Report, Mich. Ave. Ctr. for Health, Jun. 23, 2011, *available at* IRL Report, App. H.

One clinic stored medicine with food and with human waste—in one fridge storing Nuva Rings (contraceptives) alongside a bottle of cola, and in a second, separate biohazard laboratory refrigerator keeping "products of conception" (fetal tissue) with medications and frozen TV dinners. Deficiencies Report, Women's Aid Clinic, Sept. 7, 2011, *available at* IRL Report, App. M, App. G.

Staffing and patient counseling was also an issue, with at least two clinics having no Registered Nurse employed, leaving unqualified personnel to administer medical attention. Deficiencies Report, N. Ill. Women's Ctr. Rockford, Jun. 8, 2011, *available at* IRL Report, App. P; Deficiencies Report, Am. Women's

Med. Ctr., Jun. 23, 2011, *available at* IRL Report, App. O. One of those two also failed to "ensure all patients received pre-operative and post-operative counseling." Deficiencies Report, Am. Women's Med. Ctr., Jun. 23, 2011, *available at* IRL Report, App. L. Still another clinic failed to "ensure a pre-anesthesia evaluation was conducted prior to administration of anesthesia" for four out of six patients of the day. Deficiencies Report, Advantage Health Care, Oct. 4, 2013, *available at* IRL Report, App. U.

Finally, and most frighteningly prescient of the consequences that come from poor relationships between abortion doctors and local hospitals, in two out of seven cases that one clinic sent to an inpatient facility after complications from the abortion arose, the clinic "failed to ensure required documentation accompanied the patient," making it far more difficult for the doctors taking over the case to adequately care for the patient's emergent situation. Deficiencies Report, Mich. Ave. Ctr. for Health, Jun. 23, 2011, *available at* IRL Report, App. Q.

Had Illinois held abortion clinics to an appropriate standard of care and conducted equal oversight as is expected in nursing homes, restaurants, and tanning salons, these clinics would not have caused irreparable harm to their female patients.

And these are only the conditions in clinics inspected pursuant to either ASTC or PTSC *licenses*. The majority of abortion clinics in Illinois are unlicensed and uninspected, with the IDPH disclaiming

any authority to inspect the unlicensed clinics. Illinois Right to Life researchers reached out to the IDPH to find out how a woman could file a complaint about an unlicensed clinic, but were directed to the Illinois Department of Financial and Professional Regulation ("IDFPR"). IRL Report at 10. A confused IDFPR referred researchers back to the IDPH. *Id.* And so it remains: unlicensed clinics continuing to be uninspected, so no one but their employees and unsuspecting patients have any idea what contamination lurks around the corners of their operating and exam rooms.

B. Illinois' failure to enforce reporting requirements results in inadequate information for women to make truly informed choices.

As noted in Respondent's Brief, many states have no mandatory reporting requirements whatsoever, and those that do fail to enforce them, which leads to inaccurate and understated statistics regarding complications and safety risks from abortion. Resp. Br. at 31.

Illinois does have reporting laws, requiring all abortion providers to report each abortion performed, along with specific details about the abortion, including any complications. 720 Ill. Comp. Stat. 510/10. Yet there are "significant holes in state monitoring," including, for example, the fact that state records of abortions report up to 17,000 fewer abortions a year

than a national research group reports. Megan Twohey, *State Abortion Records Full of Gaps*, CHICAGO TRIBUNE, Jun. 16, 2011, http://articles.chicagotribune.com/2011-06-16/news/ct-met-abortion-reporting-20110615_1_abortion-providers-fewer-abortions-national-abortion-federation. Additionally, nearly 4,000 abortion complication reports from 2009 failed to describe *what* the complications were, undermining the purpose of the reports, which is to indicate trends and common problems so the IDPH may remedy them. *Id.*

Failure to report, or to accurately report, is a basis for revocation of a doctor's medical license. 720 Ill. Comp. Stat. 510/10.1. Yet the IDPH has never sought any disciplinary action against any provider who failed to accurately report. Megan Twohey, *State Abortion Records Full of Gaps*.

II. ILLINOIS' FAILURE TO ADEQUATELY REGULATE ABORTION PROVIDERS CAUSES DIRECT, AND SOMETIMES FATAL, HARM TO WOMEN.

In addition to the grotesque environments these abortion clinics provide, they have caused direct harm—including death—to their patients.

A. Tonya Reaves

One such patient was Chicago native Tonya Reaves. Ms. Reaves went to an unlicensed Planned Parenthood facility on Michigan Avenue for a dilation and evacuation ("D&E") procedure. Steve Miller,

Documents Shed Light on Woman's Death after Abortion, CBS CHICAGO, Jul. 24, 2012, 9:27 a.m., http://chicago.cbslocal.com/2012/07/24/documents-shed-light-on-womans-death-after-abortion/.

Ms. Reaves had her abortion at 11 a.m. *Id.* She remained in recovery at the Planned Parenthood facility—bleeding from a perforation of her uterus—for over five hours after that procedure until an ambulance was finally called and arrived at 4:30 p.m. to take her to the hospital. *Id.* The Office of Emergency Communications' records indicate that no 911 call was made from the clinic at any point. IDPR Complaint, Exh. H, *available at* https://www.thomasmoresociety.org/wp-content/uploads/2013/02/H-FOIA-911-record-18-s-michigan.pdf. It wasn't until a full hour later that doctors at Northwestern Memorial Hospital determined that a second D&E was necessary to remove what the first procedure had left behind. Miller, *Documents Shed Light.* Continued uncontrollable bleeding necessitated additional surgery in the hopes that a hysterectomy would solve the problem but, ultimately, Ms. Reaves died on the operating table. *Id.*

Ms. Reaves' family sued Planned Parenthood and Northwestern Memorial, ultimately settling the case for over $2 million. *See Reaves v. Planned Parenthood of Ill., et al.*, Cook Cnty. Case No. 2013-L-000076, Order for Approval of Wrongful Death Settlement, *available at* http://lifenews.wpengine.netdna-cdn.com/wp-content/uploads/2014/02/tonyareavessettlement.pdf.

B. Antonesha Ross

Antonesha Ross sought a first-trimester abortion from Women's Aid Clinic in Lincolnwood, Illinois, in May 2009. Nara Schoenberg, *Abortion Clinic Closes, Avoids Fine after Fatality*, CHICAGO TRIBUNE, Apr. 13, 2015, 2:34 p.m., http://www.chicagotribune.com/news/watchdog/ct-abortion-death-met-20150216-story.html (reg. req'd). Ms. Ross had been turned away at her first, scheduled abortion appointment because of an upper respiratory infection which would cause complications with anesthesia during the procedure. *Id.* However, she returned to the same clinic six days later and an abortion was performed on her without any staff ever documenting that her infection had been treated or that they had re-examined her to ensure she was now healthy enough to safely undergo the procedure. *Id.* Afterwards, she had trouble breathing, even coughing up blood, but the clinic staff did nothing for the first 40 minutes but give her a bag to breathe into. *Id.* After 40 minutes, they finally called an ambulance, but it was too late. *Id.* After transporting her to the emergency room, Ms. Ross suffered a cardiopulmonary arrest and died, barely two hours after her abortion. *Id.*

A full two and a half years later, the Women's Aid clinic was finally investigated by the IDPH. *Id.* The IDPH imposed $36,000 in fines for sanitation violations, staffing violations, and failure to provide proper care for Ms. Ross, including failing to perform CPR, which had led to her death. *Id.* To add insult to injury, the Women's Aid Clinic refused to pay the

fines. Rather, it declared bankruptcy and "closed," promptly reopening down the street with the same owner, the same website, the same phone number, and the same merchant processing number—only changing the name to the "Women's Aid Center." *Id.*

The original entity said it only had a mere $77 left after its bankruptcy and the owner insisted that the new clinic was a wholly separate entity and thus not liable for the fines of the first clinic. *Id.* The courts held that payment of the remaining $77 in the original bank account satisfied the debt and the new clinic owed nothing to the State for its repeated violations of the law. *Id.*; *see also IDPH v. Women's Aid Clinic of Lincolnwood*, 2015 IL App (1st) 140550-U (2015).

Had proper oversight occurred, the IDPH would have ensured the abortion provider was following proper clinic protocol and prevented it from escaping the consequences of its prior mistreatment of its patients. HB-2 seeks to provide this proper oversight.

C. Other Injuries and Fatalities

The above are only two stories among many tragic results for women seeking what they thought were safe, legal abortions in Illinois.

In the past 15 years, Illinois Planned Parenthood (an unlicensed abortion provider) has been sued for medical malpractice for, among other things:

- Tearing the right uterine artery due to improper surgical tool use, resulting in amputation of the uterus and cervix and permanent loss of reproductive capabilities, *Donaldson v. Planned Parenthood Chicago, et al.*, Cook Cnty. Case No. 2000-L-013105;
- Failing to remove all fetal parts from a patient's uterus, resulting in severe pain and death, *Stevenson v. Planned Parenthood Chicago, et al.*, Cook Cnty. Case No. 2002-L-015845;
- Rupturing the uterus, causing the patient to require a total hysterectomy, *Aaron v. Planned Parenthood, Inc., et al.*, Cook Cnty. Case No. 2004-L-005586.
- Tearing a patient's uterus, resulting in her death, *Baker v. Planned Parenthood Ill., et al.*, Cook Cnty. Case No. 2009-L-001757.

Family Planning Associates, a licensed abortion provider, has seen similar tragedies and lawsuits, with examples including:

- Puncturing the patient's iliac artery due to negligence during a tubal cauterization surgery, *Krause v. Family Planning Assoc., et al.*, Cook Cnty. Case No. 1992-L-012531;
- Hemorrhaging from a uterine tear and failing to promptly transport the patient to the hospital, resulting in the patient's death, *Joyce v. Family Planning Assoc., et al.*, Cook Cnty. Case No. 2000-L-008492;
- Improperly monitoring a 16-year-old patient, resulting in a heart attack and death, *Jorden*

v. Family Planning Assoc., et al., Cook Cnty. Case No. 2000-L-013983;

- Failing to properly observe the patient and timely respond to anesthesia-related complications, resulting in heart and lung failure and death, *Daumer v. Family Planning Assoc., et al.*, Cook Cnty. Case No. 2001-L-006896;
- Improperly monitoring of a 13-year-old patient and failing to transport to the hospital, leading to her death, *Adams v. Family Planning Assoc., et al.*, Cook Cnty. Case No. 2004-L-002365;
- Causing a brain anoxia in a patient, resulting in an irreversible coma, *Lambert v. Family Planning Assoc., et al.*, Cook Cnty. Case No. 2005-L-009803;
- Rupturing a patient's uterus, causing excessive bleeding and the need for a hysterectomy, *Moore v. Family Planning Assoc., et al.*, Cook Cnty. Case No. 2010-L-009209.

In addition to the instances of medical malpractice which led to the above lawsuits—with who knows how many more incidents not being brought as legal challenges—hundreds of women were potentially exposed to countless infectious diseases, including sexually transmitted diseases, as a result of the unsanitary conditions found by IDPH inspections (to say nothing of the conditions at unlicensed, uninspected clinics, which are likely even worse, given the lack of oversight).

III. ILLINOIS IS NOT ALONE IN ITS FAILURE TO PROTECT THE HEALTH AND SAFETY OF WOMEN SEEKING ABORTIONS.

Illinois' unsanitary, unsafe conditions are the norm, rather than outliers.

Responses to FOIA requests in Virginia showed every single one of nine clinics inspected to have deficiencies—for a total of 80 citations, including citations for finding blood and un-bagged fetal tissue frozen to the surface of the freezer, for clinics using the same sponges to clean all surgical instruments for an entire week, for finding that employees were unable to distinguish between instrument containers which should be used for clean versus dirty instruments, for clinics having expired medications and improperly labeled drugs, for violating the building code in numerous ways, and for failing to properly maintain the equipment. Press Release, The Family Foundation of Virginia, *BREAKING NEWS: Fetal Remains, Blood Found In Virginia Abortion Center* (Sept. 12, 2012), *available at* http://www.familyfoundation.org/blog/2012/09/breaking-news-fetal-remains-blood-found-in-virginia-abortion-center.

In Ohio in 2014, the Ohio Department of Public Health fined Planned Parenthood of Bedford Heights $25,000 for health and sanitary violations. Tristyn Bloom, *Ohio Abortion Clinic Fined $25K for Shocking Health and Sanitation Violations*, DAILY CALLER, Mar. 11, 2014, http://dailycaller.com/2014/08/02/ohio-abortion-clinic-fined-25k-for-shocking-health-and-sanitation-violations/.

These violations included failing to properly vet doctors prior to allowing them to perform abortions on female patients, failing to "clean and disinfect surgical equipment" and failing to "properly store 'frozen [human] tissue,'" or "dispose urine samples (many of which were found sitting around unlabeled through the clinic)." *Id.* Other violations included failing to "dispose single-use medical equipment and expired medical supplies. " *Id.*

Moreover, in 2015, Ohio Attorney General Mike DeWine announced they had uncovered that all three Planned Parenthood facilities in Ohio had disposed of aborted fetuses in landfills, thereby violating state code. Morgan Chalfant, *Ohio Planned Parenthood Facilities Dispose of Aborted Fetuses in Landfills*, WASHINGTON FREE BEACON, Dec. 11, 2015, http://freebeacon.com/issues/ohio-planned-parenthood-facilities-dispose-aborted-fetuses-landfills/.

In Georgia, WSB-TV combed through five years of government health inspections conducted in licensed abortion clinics. *Records show Georgia's abortion clinics lack inspection*, WSB-TV 2, Nov. 19, 2015, https://www.youtube.com/watch?v=uF0AP5O1b_U. The news station found "unsterilized instruments, dirty linens, and expired medications." *Id.* Sterile and non-sterile supplies were stored in the same rooms, iodine swabs used to prevent infection had been expired for ten years, vents were taped off with cardboard, and stirrups were wrapped in duct tape. *Id.* Staci Fox from Planned Parenthood Southeast told WSB-TV in an interview that she believes "there's probably more

they [the state] could be doing" to ensure facilities are safe. *Id.*

In Delaware, clinics are only inspected in response to patient complaints. Wendy Saltzman and Action News, *Delaware Abortion Clinic Facing Charges of Unsafe and Unsanitary Conditions*, ABC 6 ACTION NEWS, Apr. 29, 2013, http://6abc.com/archive/9059172/. Two former nurses quit their jobs at Planned Parenthood of Delaware because of unsafe conditions inside the clinic. *Id.* Jayne Mitchell-Wrbrich and Joyce Vasikonis told ABC6 News, "It was just. unsafe. I couldn't tell you how ridiculously unsafe it was. He didn't wear gloves. They were using instruments on patients that were not sterile." *Id.* The bloody drainage on operating tables was not cleaned off from the last patient, they continued. *Id.* "They [the female patients] could be at risk of getting hepatitis, even AIDS." *Id.* According to ABC6 News, "both of these nurses said they quit to protect their own medical licenses, stunned by what they called a meat-market style of assembly-line abortions." *Id.*

In Alabama, a 2012 investigation of a single clinic resulted in a report with *76 pages* of violations, including (among others) failure to properly train staff, permitting staff to administer medications without authority, and dangerous over-medication resulting in a need for hospitalization. Alabama Dep't of Pub. Health, Deficiencies Report, New Woman All Women Health, Mar. 1, 2012, *available at* http://abortiondocs.org/wp-content/uploads/2012/04/NEW-WOMAN-ALL-WOMEN-201203011.pdf.

A Michigan abortion provider proudly boasted of her use of ordinary kitchen implements in performing abortions. Lisa H. Harris, *Women's Work*, ATRIUM: THE REPORT OF THE NORTHWESTERN MEDICAL HUMANITIES AND BIOETHICS PROGRAM, Issue 12, Winter 2014, *available at* http://www.bioethics.northwestern.edu/docs/atrium/atrium-issue12.pdf. Also in Michigan, an OB-GYN is under investigation for performing illegal abortions after fetal tissue was discovered in his car. Jim Kiertzner, *Raid on doctor's office after possible fetuses found in car—Was he performing illegal abortions?*, ABC 7 WXYZ DETROIT, Oct. 13, 2015, 4:52 p.m., http://www.wxyz.com/news/region/oakland-county/possible-fetuses-human-tissue-found-in-local-doctors-car-was-he-peforming-illegal-abortions.

Even Texas, where Petitioners claim there were already adequate regulations prior to HB-2, had its own version of Kermit Gosnell in Dr. Douglas Karpen, who was accused of twisting babies' heads off their necks with his bare hands, suffocating newborns and placing them in trash bags, hurting his patients, and not telling patients when he had botched their abortions. Dr. Susan Berry, *Texas Lt. Gov. Demands Investigation of Abortionist After Video Exposé*, BREITBART, May 15, 2013, http://www.breitbart.com/big-government/2013/05/15/texas-lt-gov-demands-investigation-of-abortionist/.

Also in Texas, a Beaumont TV station reported that the local clinic run by Whole Woman's Health—one of the Petitioners in this case—was found to have multiple health and safety violations. *Beaumont Abortion Clinic Not Safe, According To State*, KFDM

NEWS, Jan. 9, 2014, https://www.youtube.com/watch?v=mz-sSpCqguc&feature=youtu.be. Violations included holes in the floor (permitting vermin to get in), rust on suction machines that would be inserted into a woman's body, oxygen tanks improperly stored in hallways, a lack of essential, life-saving machines such as an EKG machine and a defibrillator, expired medication, medication spilled on non-sterile surfaces, and more than a year of failing to create a protocol for transporting patients in case of emergencies. *Id.*

Petitioners claim that prior to HB-2, abortion in Texas was already "subject to robust regulation." Pet.'s Br. at 31. Yet Whole Woman's Health in Beaumont continued to have health and safety violations under the prior regime, only remedying the violations (through closure) with the advent of HB-2's requirements. Angel San Juan, *Beaumont's only abortion clinic is closing*, 12NEWSNOW, Mar. 6, 2014, 1:00 a.m. CST, http://www.12newsnow.com/story/24899929/beaumonts-abortion-clinic-is-closing. In Texas, HB-2 does in fact protect women's health in a way that prior law was inadequate to do.

The above health and sanitary violations cited by state agencies are merely a sampling, not an exhaustive list, of the violations uncovered in abortion clinics across the country. The epidemic of unsanitary conditions and callous doctors disregarding women's health and safety within abortion clinics is real, and it is one that every state, including Texas, has a vital interest in regulating—for the benefit of *all* their citizens. It is

not only reasonable, but responsible of the state of Texas to enact laws increasing the safety and sanitary conditions inside its abortion clinics and in continuation of care when abortion leads to complications treated outside the clinics.

CONCLUSION

For all of the foregoing reasons, this Court should find that the statute in question, Texas' HB-2, is constitutional because it serves the State's legitimate interest in protecting the health and safety of all women.

Respectfully submitted,

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